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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA  
FIRST APPELLATE DISTRICT  
DIVISION THREE

NAQUETHIA STEVENSON,  
Plaintiff and Appellant,  
v.  
VETERANS CAB COMPANY,  
Defendant and Respondent.

A092480  
(Alameda County  
Super. Ct. No. 8103231)

Naquethia Stevenson appeals the dismissal of her personal injury suit, following the grant of summary judgment for Veterans Cab Company and cab driver Debra Singh. Stevenson contends the existence of a triable issue of fact regarding defendants' negligence precluded summary judgment. Stevenson concedes her opposition to defendants' motion for summary judgment was untimely filed, but contends the trial court should have ordered an extension of time for the hearing on the motion, despite her failure to request such relief below. We affirm.

***Factual and Procedural Background***

Stevenson was a passenger in a vehicle attempting to evade police in a high-speed chase on an Oakland city street in the middle of the night. The vehicle ran several stop signs and struck the taxicab driven by Singh.<sup>1</sup> Stevenson filed a negligence complaint against Singh and Veterans Cab Company. Defendants moved for summary judgment,

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<sup>1</sup> The driver of the car carrying Stevenson later pled guilty to fleeing the scene of an injury accident, and was ordered to pay restitution to Veterans Cab Company.

arguing that Stevenson's discovery responses set forth no facts supporting her negligence claim, and all the evidence showed defendants had acted prudently and lawfully.<sup>2</sup> The trial court granted summary judgment on the grounds that Stevenson had failed both to file timely opposition and to raise a triable issue of material fact regarding defendants' alleged negligence. This timely appeal followed the ensuing judgment of dismissal.

### ***Discussion***

Defendants filed their summary judgment motion with a hearing date set for June 15, 2000. The moving papers were timely served on Stevenson's counsel on May 15, 2000. Stevenson's opposition was due on June 1, 2000. (Code Civ. Proc., § 437c, subd. (b).<sup>3</sup>) Stevenson served an untimely opposition on June 5, 2000, including a two-page separate statement of undisputed facts that lacked specific evidentiary support. Defendants objected to the untimely opposition, and filed a reply. On June 15, the matter was deemed submitted and the tentative ruling affirmed. Defendants' motion was granted on both procedural and substantive grounds.

It is within the trial court's discretion to grant summary judgment based on an opposing party's failure to file a separate statement as required by statute. (§ 437c, subd. (b); *Security Pacific Nat. Bank. v. Bradley* (1992) 4 Cal.App.4th 89, 93; *Sacks v. FSR Brokerage, Inc.* (1992) 7 Cal.App.4th 950, 960-961; *Blackman v. Burrows* (1987) 193 Cal.App.3d 889, 893-896.) Stevenson's statement was not only untimely, but also lacked citation to specific evidentiary support. In disputing defendants' statement that the collision was caused by the criminal misconduct of the driver of the car carrying Stevenson, appellant asserted that Singh's inattention was a contributory cause, citing the police report generally, without reference to a specific page. Our own review of the report reveals no such statement.

Summary judgment was also properly granted on the merits. Stevenson claims that even considering only the defendants' moving papers, a triable issue of fact was

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<sup>2</sup> We note that several months earlier, plaintiff's counsel had failed to appear at the case management conference and to file a case management conference statement, resulting in an order to show cause regarding sanctions and/or dismissal of the complaint.

raised regarding Singh's negligence in entering the intersection where her taxi was hit. Singh testified at her deposition, however, that she made a complete stop at the stop sign, and did not see the lights of the pursuing police car until after she was struck by the vehicle carrying Stevenson. Singh's passenger also testified that Singh came to a complete stop and looked both ways before proceeding carefully into the intersection. She observed no oncoming traffic. The passenger in Singh's taxi told police "a car . . . came out of nowhere and hit the taxi on the passenger side and we started spinning." There was nothing Singh could have done to avoid the accident. The investigating police officer determined the cause of the accident was the fleeing vehicle's failure to stop before entering the intersection. The police report stated: "The police department's investigation did not identify any associated or contributing causal factor on the part of the driver of the Veterans taxi." Singh did not fail to yield to an emergency vehicle because the police car was traveling approximately two blocks behind the vehicle carrying Stevenson. Stevenson herself had no recollection of the collision, and did not see the taxi. She was facing the driver of the fleeing vehicle and "hollering at him" before the collision.

A defendant may meet the burden of showing a cause of action has no merit by showing that one or more elements cannot be established because of the absence of evidence on a critical element of the claim. (*Union Bank v. Superior Court (Demetry)* (1995) 31 Cal.App.4th 573, 590.) The burden then shifts to plaintiff to show a triable issue of material fact, based on specific and admissible evidentiary facts. (§ 437c, subd. (o)(2); *Arciniega v. Bank of San Bernardino* (1997) 52 Cal.App.4th 213, 231; *Rochlis v. Walt Disney Co.* (1993) 19 Cal.App.4th 201, 210.) "The plaintiff . . . may not rely upon the mere allegations or denials of its pleadings to show that a triable issue of material fact exists but, instead, shall set forth the specific facts showing that a triable issue of material fact exists as to that cause of action or a defense thereto." (§ 437c, subd. (o)(2).) The moving party's papers are strictly construed, and the opposing party's papers are liberally

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<sup>3</sup> All further statutory references are to the Code of Civil Procedure.

construed. While the opposing party may rely on circumstantial evidence and inferences arising from declarations or other evidence, those inferences must be reasonable, not speculative. (*Leslie G. v. Perry & Associates* (1996) 43 Cal.App.4th 472, 482-483.) Stevenson's stated belief that a jury could find Singh was inattentive and failed to use due care constitutes just such impermissible speculation, and is not supported by the evidence presented to the trial court.

Stevenson's separate statement presented no specific evidence to establish a triable issue of material fact, in response to defendants' showing that plaintiff had no substantial material evidence of any negligence on defendants' part. Stevenson's separate statement did not refer to the observations of witness Mohamad Mohamad, which she now mentions to support her theory that Singh was inattentive, nor does Mohamad's statement create a reasonable inference that Singh was negligent.<sup>4</sup> Summary judgment was properly granted on both procedural and substantive grounds.<sup>5</sup>

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<sup>4</sup> Mohamad's observations were contained in the police report included in defendants' moving papers, but were cited in neither party's separate statement. Mohamad told police he was waiting at another stop sign in the intersection, and saw a car traveling very fast collide with the taxi. Mohamad's ability to observe the approaching vehicle from a different area of the intersection does not create a reasonable inference regarding Singh's ability to see the vehicle from her vantage point, even assuming his comments constituted admissible evidence. We also note the pursuing police officer testified at his deposition that Singh had "very limited visibility" in the direction from which the car carrying Stevenson approached, because Singh's view was obstructed by intervening buildings or other structures.

<sup>5</sup> Stevenson's attorney has also attached a declaration to her opening brief, stating that at the time of the summary judgment proceedings she was unknowingly suffering from hypothyroidism and diabetes, conditions which were diagnosed shortly thereafter and which caused extreme fatigue. Counsel maintains that the trial court should not have penalized her client for her failure to file timely opposition to defendants' summary judgment motion, but instead should have extended the date of the hearing to give defendants time to reply. She concedes that she failed to ask for such an extension in the trial court, however, and fails to cite any authority to support her request that this court may now extend such a remedy. Matters not properly raised in the trial court will not be considered on appeal. (*North Coast Business Park v. Nielsen Construction Co.* (1993) 17 Cal.App.4th 22, 29.)

*Disposition*

The judgment is affirmed.

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Corrigan, J.

We concur:

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McGuinness, P.J.

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Parrilli, J.